

Appn. No. 10/065,461
Docket No. 126800/GEN-0342

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REMARKS / ARGUMENTS

Status of Claims

Claims 1-17 are pending in the application. Claims 1, 3-6, and 8-14 stand rejected. Claims 2 and 7 are objected to as being dependent upon a rejected claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 15-17 are allowed. Applicant appreciates the Examiner's notation of the allowability of claims. Applicant has amended Claims 1 and 13, and has added new Claims 18-19, leaving Claims 1-19 for consideration upon entry of the present Amendment.

Applicant respectfully submits that the rejections under 35 U.S.C. §102(b) have been traversed, that no new matter has been entered, and that the application is in condition for allowance.

Objections to the Specification

The specification is objected to for reasons relating to informalities.

Applicant has amended the specification in a way believed to comply with the statutory requirements and to address the Examiner's concern regarding informalities. Applicant believes these informalities to have arisen through use of the EFS filing system, and procedures used in connection therewith.

In view of the amendments, Applicant requests reconsideration and withdrawal of these objections, which Applicant considers to be overcome.

Claim Objections

Claims 1 and 13 are objected to for reasons relating to informalities.

Applicant has amended Claims 1 and 13 to correct for these informalities.

While Applicant has amended Claim 1 as suggested by the Examiner, Applicant submits that one skilled in the art would know that "a first and a second timer" meant "a

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first timer and a second timer", and therefore the scope of the claim does not change. More specifically, the claim has not been narrowed by this amendment.

While Applicant has amended Claim 13 as suggested by the Examiner, Applicant submits that when the "adapted to" language states a condition that is material to patentability, it cannot be ignored in order to change the substance of the invention. MPEP 2111.04 [R-3]. Here, the Examiner looks to Sheppard to show an automatic transfer switch that switches power service between a first power source and a second power source (Paper No. 20060523, page 6), suggesting that the term "adapted to", now amended to read "configured to", is material to patentability. As such, Applicant submits that the scope of the claim has not changed. More specifically, the claim has not been narrowed by this amendment.

In view of the foregoing, Applicant requests reconsideration and withdrawal of these objections, which Applicant considers to be overcome.

Rejections Under 35 U.S.C. §102(b)

Claims 1, 3-6 and 8-14 stand rejected under 35 U.S.C. §102(b) as being anticipated by Sheppard et al. (U.S. Patent No. 5,739,594, hereinafter Sheppard).

Applicant traverses this rejection for the following reasons.

Applicant respectfully submits that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, *in a single prior art reference.*" *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). Moreover, "[t]he identical invention must be shown in as complete detail as is contained in the *** claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Furthermore, the single source must disclose all of the claimed elements "arranged as in the claim." *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). Missing elements may not be supplied by the knowledge of one skilled in the art or the disclosure of another reference.

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Titanium Metals Corp. v. Banner, 778 F.2d 775, 780, 227 U.S.P.Q. 773, 777 (Fed. Cir. 1985).

Independent Claims 1 and 13 recite inter alia:

"...said second time delay is *nested within* said first time delay."

Dependent claims inherit all of the limitations of the parent claim.

In alleging anticipation, the Examiner remarks: "...Fig. 5B [of Sheppard] depicted TIMER2 occurs after TIMER1 and the looping of the process with the GOTO START block. Therefore, TIMER2 is nested in TIMER1". Paper 20060523, page 4.

Applicant respectfully disagrees that Sheppard discloses each and every element of the claimed invention *arranged as claimed*. More specifically, Applicant submits that the reference made by the Examiner fails to show that the second time delay of Sheppard is *nested within* the first time delay of Sheppard, which is specifically claimed for in the instant invention.

First, the Examiner acknowledges that "TIMER 2 occurs *after* TIMER1". As such, Applicant submits that Sheppard TIMER2 cannot be *nested within* TIMER1 if it occurs *after* TIMER1.

Second, Applicant finds Sheppard to disclose in Fig. 5B that logic block "Initialize Timer 1" 240 and logic block "Is Timer 1 Time Out?" 242 are logically connected in series with logic block "Initialize Timer 2" 248 and logic block "Is Timer 2 Timed Out?" (between 252 and 254). Accordingly, Applicant submits that TIMER2 is illustrated in Sheppard to be logically *in series with* TIMER1 and *not to be nested within* TIMER1.

Third, Applicant finds Sheppard to disclose at column 5, line 59, through column 6, line 4, that the routine of TIMBR1 starting at 240 loops around at 242 until TIMER1 has timed out and checks if normal power has become available at 242. Then, the routine begins checking for the availability of emergency power at 246. If emergency power is available at 246, a second timer TIMER2 is intialized at 248. Here, Applicant finds Sheppard to clearly disclose a *TIMER2 that does not become active until TIMER1 has*

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timed out and until emergency power is available, which is substantially different from TIMER2 being *nested within* TIMER1.

Fourth, and as best understood by Applicant, the Examiner seems to be implying that because TIMER2 is part of *the looping process with the GOTO START block*, this somehow results in TIMER2 being nested within TIMER1. Applicant respectfully disagrees, and submits that disclosure in Sheppard of TIMER2 being *within the GOTO START block* is not the same as TIMER2 being *nested within TIMER1*.

Accordingly, Applicant submits that Sheppard does not disclose all of the claimed elements arranged as in the claim, and absent anticipatory disclosure in Sheppard of each and every element of the claimed invention arranged as in the claim, Sheppard cannot be anticipatory.

In view of the foregoing remarks, Applicant submits that Sheppard does not disclose each and every element of the claimed invention arranged as claimed and therefore cannot be anticipatory. Accordingly, Applicant respectfully submits that the Examiner's rejection under 35 U.S.C. §102(b) has been traversed, and requests that the Examiner reconsider and withdraw of this rejection.

Regarding New Claims 18-19

Applicant has added new Claims 18-19 to capture previously disclosed but unclaimed subject matter. No new matter has been added as antecedent support can be found in the application as originally filed, such as in the original claims but in alternative language, for example. Accordingly, Applicant submits that new Claims 18-19 are directed to allowable subject matter, and respectfully requests notice thereof.

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The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 06-1130. In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-identified Deposit Account.

Respectfully submitted,

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